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DEPARTMENT OF COMMERCE

International Trade Administration

[A-520-804]

Certain Steel Nails from the United Arab Emirates: Notice of Court Decision Not in Harmony With the Final Determination and Amended Final Determination of the Less Than Fair Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 3, 2015, the United States Court of International Trade (Court) sustained the Department of Commerce's (the Department) *Final Remand Redetermination* pertaining to the less-than-fair-value (LTFV) investigation of certain steel nails from the United Arab Emirates.¹ Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the Court's final judgment in this case is not in harmony with the *Final Determination*, and that the Department is amending the *Final Determination* with respect to Dubai Wire FZE (Dubai Wire), and Precision Fasteners LLC (Precision Fasteners).² The period of investigation (POI) is January 1, 2010, through December 31, 2010.

¹ See *Mid Continent Nail Corp. v. United States*, CIT Consol. Court No. 12-00133, Slip Op. 15-122 (November 3, 2015); Final Results of Redetermination Pursuant to Court Remand, Court No. 12-00133, dated September 30, 2014 (*Final Remand Redetermination*); *Mid Continent Nail Corp. v. United States*, 999 F. Supp. 2d 1307 (CIT 2014) (*Remand Order*).

² See *Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) as amended by *Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27421 (May 10, 2012), (collectively, *Final Determination*).

DATES: EFFECTIVE DATE: November 13, 2015.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0198 or (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 2014, the Court issued the *Remand Order*, upholding most aspects of the *Final Determination*, but remanding for the Department to apply a regulation the Court held had been improperly withdrawn.³ On remand, the Department applied the withdrawn regulation, under protest, and as a result, the estimated weighted-average dumping margins for Dubai Wire and Precision Fasteners changed. On November 3, 2015, the Court upheld the *Final Remand Redetermination* in full, and affirmed several other appealed issues which it had deferred ruling on pending the Department's remand findings.⁴

Timken Notice

In its decision in *Timken*, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's November 3, 2015, final judgment affirming the *Final Remand Redetermination* constitutes a final decision of that court which is not in harmony with the *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*.

³ See *Mid Continent*, 999 F. Supp. 2d at 1323.

⁴ See *Mid Continent*, Court No. 12-00133, Slip Op. 15-122 at *22.

Amended Final Determination

Because there is now a final court decision, the Department is amending the *Final Determination* with respect to both Dubai Wire and Precision Fasteners.

<u>Producer or Exporter</u>	<u>Weighted-Average Dumping Margin (Percent)</u>
Dubai Wire FZE	2.86
Precision Fasteners LLC	0.00

Partial Exclusion from Antidumping Duty Order and Partial Discontinuation of Antidumping Duty Administrative Review

Pursuant to sections 735(c)(2) of the Act, “the investigation shall be terminated upon publication of that negative determination” and the Department shall “terminate the suspension of liquidation” and “release any bond or other security, and refund any cash deposit.” *See* Sections 735(c)(2)(A) and (B) of the Act. As a result of this amended final determination, in which the Department calculated a weighted-average dumping margin of 0.00 percent for Precision Fasteners, the Department is hereby excluding merchandise from the following producer/exporter chain from the antidumping duty order:

Producer: Precision Fasteners LLC

Exporter: Precision Fasteners LLC

Accordingly, the Department will direct U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits. This exclusion does not apply to merchandise produced by Precision Fasteners and exported by any other company. Therefore, resellers of merchandise produced, or produced and exported by Precision Fasteners are not entitled to the exclusion. Similarly, the exclusion does not apply to merchandise produced by any other company and exported by Precision Fasteners.

We note, however, that pursuant to *Timken* the suspension of liquidation must continue during the pendency of the appeals process. Thus, at this time we will instruct CBP to continue the suspension of liquidation at a cash deposit rate of 0.0 percent for entries produced and exported by Precision Fasteners until otherwise instructed and to release any bond or other security that Precision Fasteners made pursuant to the *Final Determination*. If the CIT's ruling is not appealed, or if appealed and upheld, the Department will instruct CBP to terminate the suspension of liquidation and to liquidate entries produced and exported by Precision Fasteners without regard to antidumping duties. As a result of the exclusion, the Department is discontinuing the ongoing administrative review for Precision Fasteners, in part⁵ and will not initiate any new administrative reviews of the antidumping duty order with respect to merchandise produced and exported by Precision Fasteners.

Lastly, we note that at this time, the Department remains enjoined by Court order from liquidating entries produced and/or exported by Precision Fasteners during the period 11/03/2011 through 4/30/2013 with the exception of the gap period 05/02/2012 through 05/07/2012. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Dubai Wire was a mandatory respondent in completed administrative reviews subsequent to the LTFV investigation and therefore the Dubai Wire LTFV redetermination weighted-average dumping margin is superseded by the cash deposit rate currently in effect for Dubai Wire.⁶

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 37588 (July 1, 2015). The review will continue with regard to merchandise produced by Precision Fasteners and exported by another company or produced by any other company and exported by Precision Fasteners.

⁶ See *Certain Steel Nails From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 32527, 32528 (June 9, 2015).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 4, 2015.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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